CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 00–43)

TUNA FISH—TARIFF-RATE QUOTA

THE TARIFF-RATE QUOTA FOR CALENDAR YEAR 2000, ON TUNA CLASSIFIABLE UNDER SUBHEADING 1604.14.20, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna fish for calendar year 2000.

SUMMARY: Each year, the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on canned tuna production by the United States for the preceding calendar year. This document sets forth the quota for calendar year 2000.

EFFECTIVE DATES: The calendar year 2000 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Chief, Quota/Visa Branch, Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, (202) 927–5399.

BACKGROUND

It has been determined that 28,305,623 kilograms of tuna may be entered or withdrawn from warehouse for consumption during the calendar year 2000, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: June 30, 2000.

RAYMOND W. KELLY,
Commissioner.

[Published in the Federal Register, July 7, 2000 (65 FR 42063)]

19 CFR Chapter I

T.D. 00–44

COUNTRY OF ORIGIN MARKING RULES FOR TEXTILES AND TEXTILE PRODUCTS ADVANCED IN VALUE, IMPROVED IN CONDITION, OR ASSEMBLED ABROAD

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This notice advises the public that Customs will no longer apply 19 CFR 12.130(c) for purposes of country of origin marking of textiles and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States (HTSUS), does not apply for country of origin marking purposes.

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In T.D. 85–38, 50 FR 8710 (March 5, 1985), Customs adopted as a final rule an interim amendment to the Customs Regulations, consisting of the addition of a new section 12.130 (19 CFR 12.130) to establish criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral and bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In T.D. 85–38, Customs stated that section 12.130 is applicable to merchandise for all purposes, including duty and marking. A similar statement was made in T.D. 90–17, 55 FR 7303 (March 1, 1990).

Paragraph (c)(1) of section 12.130 provides in part as follows:

> * * * In order to have * * * a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

Paragraph (c)(2) of section 12.130 accords essentially the same treatment to products of insular possessions.

Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, (Note 2(a)), provides in pertinent part as follows:

> * * * Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article

which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article.

Subsequently, in connection with the development of the final NAFTA Marking Rules, Customs concluded that Note 2(a) should not apply for general country of origin purposes, including marking. 60 FR 22312, 22318 (May 5, 1995). Accordingly, in order to clarify the applicability of this position for marking purposes, on June 15, 1998, Customs published a notice of proposed interpretation (hereinafter "proposed interpretation") in the Federal Register (63 FR 32697) to the effect that section 12.130(c) of the Customs Regulations should not control for purposes of determining the country of origin marking of textile and textile products, and that Note 2(a) does not apply for country of origin marking purposes. The notice solicited public comments on the proposal, and the public comment period was extended to December 18, 1998.

DISCUSSION OF COMMENTS:

A total of 7 entities submitted comments in response to the notice. Although all of the commenters were generally supportive of the proposed interpretation, two were opposed to the proposal as it pertains to textiles whose origin is determined by where the fabric is formed. The specific points made by the commenters are discussed below.

Comment:

Several comments were received on particular operations that should or should not be allowed abroad in order for a U.S.-origin textile or textile product to remain of U.S. origin. One commenter strongly supports the proposed interpretation since minor operations performed on U.S. garments abroad should not force a change in origin solely because of 19 CFR 12.130(c). This commenter stated that imported articles that undergo a similar process in the United States do not undergo a change in origin in the United States. Another commenter supports the proposed interpretation as it would permit apparel produced in the United States that is exported for minor finishing operations such as silk screening, embroidery, stone washing, etc., to better compete against foreign competition.

Another commenter states that textiles and textile products made in the United States and sent abroad to be advanced in value or improved in condition should be considered products of the United States for marking purposes provided they: (a) "do not undergo a change of tariff heading (sic) at the eight digit level; (b) do not otherwise undergo a substantial transformation; and (c) undergo no assembly operation while abroad." The commenter states that if decorative components such as epaulets, patches, flaps, etc. are added to a U.S.-origin article while abroad, the article should still be able to be marked as a product of the United States. Other foreign operations that should be allowed without the U.S.-made article losing its origin are suggested to be washing, printing, painting, garment dyeing, and embroidery. The commenter

also states that value-added criteria should not be considered in determining how articles shall be marked.

Customs Response:

The textile rules of origin of section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. 3592), as implemented by section 102.21 of the Customs Regulations, are in most cases determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad. Therefore, the origin rules provided for in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product under those rules by virtue of the processing performed abroad. In response to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products for marking purposes if they undergo a tariff change at the eight digit level, Customs presumes the commenter means from one eight digit classification to another eight digit classification. In examining 19 CFR 102.21, Customs notes that there are limited instances where a change is allowed at the eight digit level. However, these rules reflect section 334 of the URAA, as amended by the "Trade and Development Act of 2000", Pub. L. 106–200, 114 Stat. 251 (May 18, 2000).

In reference to the commenter 's statement that U.S. textiles and textile products should not be considered U.S. products if they undergo a substantial transformation abroad, Customs simply notes that section 334 of the URAA, as amended, represents the view of Congress on how the substantial transformation principle should be applied. *See* T.D. 95–69, 60 FR at 46195. Therefore, to the extent that a U.S. textile product undergoes a change in origin abroad as set forth in 19 CFR 102.21, it would be considered a foreign product for marking purposes. Additionally, Customs notes that, in general, the textile rules of origin at 19 CFR 102.21 provide that the complete assembly of two or more integral components in a single country will result in a change in origin, thereby requiring most U.S. textile products that are assembled abroad to be marked as foreign articles.

Furthermore, under the 19 CFR 102.21 rules, the attachment of minor decorative components to a U.S. textile product while abroad would not result in a change in origin. For example, affixing an emblem classified in heading 5810, HTSUS, to a U.S. T-shirt classified in heading 6109, HTSUS, in a foreign country would not result in a change in the T-shirt's origin. 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6101–6117. Therefore, the U.S. T-shirt may be returned as a product of the United States, and would not be required to be marked as a foreign article for purposes of 19 U.S.C. 1304 as previously required by 19 CFR 12.130(c). However, the T-shirt would be required to be labeled in accordance with the Textile Fiber Products Identification Act which is within the jurisdiction of the Federal Trade Commission (see further discussion below). Customs also notes that a U.S. T-shirt sent abroad for silk-screening, painting, or printing would also not change origin by

virtue of these processes occurring, and the returned T-shirt would not be required to be marked as a foreign article. A similar result would apply to U.S. jeans which are washed, stone-washed, dyed, or embroidered abroad. However, U.S. T-shirt components or jean components sent abroad for assembly into T-shirts or jeans would change origin as a result of the assembly and would require marking as a foreign article pursuant to 19 CFR 102.21.

The tariff shift rules at 19 CFR 102.21 also do not include value-added criteria. To the extent that origin may not be determined under the applicable tariff shift rule of 19 CFR 102.21(e), the origin is determined by referring to the country in which the "most important assembly or manufacturing process occurred".

Comment:

Two comments were received concerning the application of the proposed interpretation as it would pertain to textiles whose origin is determined by where the fabric is formed. One commenter opposes the proposed interpretation as it would apply to articles such as scarves, handkerchiefs, and bandannas. The other commenter opposes the proposed interpretation as it would apply to household linens and apparel accessories made overseas with domestic fabric. The commenters claim that the proposed interpretation would allow U.S.-made woven fabric made into scarves, etc. abroad to be labeled with a qualified "Made in U.S.A." statement, while scarves, etc. made in the United States using foreign-made woven fabric would have to be labeled as being of foreign origin pursuant to 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6215–6217(2). It is stated that domestic manufacturers of scarves, etc. use both domestic and imported fabric. The fabric may be imported in a finished or greige condition, and may be bleached, dyed and/or printed in the United States. The finished fabric is also cut and sewn to manufacture scarves, etc. It is claimed that this would place domestic manufacturers at a significant competitive disadvantage, because if imported finished fabric or greige fabric is used and made into scarves in the United States, for example, the article is required to be marked as a foreign article. The commenters state that the purpose of the marking statute, 19 U.S.C. 1304, is to let the consumer know when they are purchasing foreign-made products, and that the proposed interpretation ignores this purpose. It is claimed that the fact the Federal Trade Commission will require some form of qualification does not really eliminate the potential of consumer deception. Therefore, these commenters suggest a modification to the proposed interpretation to exclude household linens and apparel accessories.

However, a third comment from a domestic manufacturer of bedding and bath products supports the proposed interpretation and believes that its adoption is necessary to ensure the uniform application of the country of origin rules for textile products promulgated pursuant to 19 U.S.C. 3592. The commenter claims that 19 CFR 12.130(c) contradicts the intent of Congress as set forth in 19 U.S.C. 3592 which provides

that the textile rules of origin shall govern for the purposes of the Customs laws and the administration of quantitative restrictions, and 19 U.S.C. 3592(b)(2)(A) provides that the origin of certain products, such as sheets, shall be the country in which the fabric was formed. The commenter submits that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, and that the country of origin rules governing textile products should be uniformly applied for country of origin marking purposes. This commenter states that it has invested in state-of-the art equipment for weaving fabric from raw cotton and man-made fibers and that these investments have allowed them to compete in the world marketplace. The commenter claims that with the enactment of 19 U.S.C. 3592, it is appropriate to re-examine T.D. 85–38 and T.D. 90–17 to assess what statutory policies are being furthered by the application of 19 CFR 12.130(c) to textile products such as sheets that are produced abroad from U.S.-origin fabric.

Customs Response:

Customs is of the opinion that 19 CFR 12.130(c) should no longer be applied for country of origin marking purposes. Section 12.130(c) states that merchandise which falls within the "purview of Chapter 98, Subchapter II, Note 2, HTSUS," may not, upon its return to the U.S., be considered a product of the United States. As suggested by the supporting commenter that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, Customs notes that the returned article need not necessarily be classifiable in Chapter 98, but must only be within the purview of Note 2. For example, U.S. greige fabric dyed abroad would not be classifiable in Chapter 98, but rather would be fully dutiable. *See Dolliff & Company, Inc. v. United States*, 455 F. Supp. 618 (CIT 1978), *aff'd*, 599 F.2d 1015 (Fed. Cir. 1979). However, the returned dyed fabric would be within the purview of Note 2 as it is a U.S. product sent abroad and advanced in value. Therefore, under the position stated in T.D. 85–38 and in T.D. 90–17, the returned fabric would be required to be marked as a foreign article. Because Customs applied section 12.130(c) for marking purposes due to the statements made in T.D. 85–38 and T.D. 90–17, 19 CFR 12.130(c) should no longer apply for country of origin marking purposes in light of the comments supporting the proposed interpretation, and in light of Customs previous statements made in connection with the NAFTA Marking Rules. 60 FR 22312, 22318 (May 5, 1995).

In regard to the marking of scarves, handkerchiefs, bandannas, household linens, etc., since 19 U.S.C. 3592 sets forth the rules of origin for textile and apparel products for purposes of the customs laws, Customs lacks authority to carve out any exception for these articles. However, Customs notes that with the passage of the "Trade and Development Act of 2000", in particular section 405, some of the concerns raised by the commenter appear to have been alleviated as certain

fabrics and articles will no longer be considered to originate where the fabric is made.

Comment:

One commenter submits that 19 CFR 12.130(c) should no longer apply for country of origin marking purposes and for quota purposes. The commenter states that T.D. 85–38 was promulgated to prevent the circumvention of visa or export license requirements contained in multilateral and bilateral textile restraint agreements. The commenter notes that the Tariff Act of 1930 never addressed issues concerning country of origin determinations for quota purposes. Nonetheless, this rule was applied for marking and quota purposes because Customs believed that Congress did not intend Customs to apply one rule of origin for duty and marking purposes and a different rule for quota purposes.

This commenter states that it is unaware of any bilateral agreement that requires the imposition of quota restraints on products that are deemed to be of U.S. origin pursuant to the rules set forth in 19 CFR 102.21(e). As an example, the bilateral textile agreement negotiated between the United States and Fiji is presented, which requires Fiji to limit exports to the United States of cotton and man-made fiber textile and textile products of Fiji. The commenter notes that if a sheet is produced in Fiji using Australian fabric, Fiji would not possess authority to limit the exports of such sheets to the United States; however, it presently would if U.S. fabric were used, thus placing U.S. fabric manufacturers at a competitive disadvantage to fabric producers in nonquota countries such as Australia.

Another commenter questions whether Customs would still require a textile visa for textiles and textile products under the new proposed position.

Customs Response:

With regard to the comments received regarding the applicability of 19 CFR 12.130(c) for quota purposes, we note that this would be more appropriately addressed to the Committee for the Implementation of Textile Agreements which issues instructions concerning these issues.

Comment:

The Federal Trade Commission (FTC) notes that with respect to marking, the ordinary textile rules of origin, prescribed in 19 CFR 102.21, as interpreted by Customs, would apply, but that the Textile Fiber Products Identification Act (TFPIA), set forth at 15 U.S.C. 70 et seq., and the FTC rules implementing the TFPIA, set forth at 16 CFR Part 303, would also still apply.

The FTC states that the TFPIA requires that textile products be labeled to show the country of origin, whether domestic or foreign. 15 U.S.C. 70b(b)(4)&(5). The FTC rules implement the statutory requirement; explain how it applies to products made, in part, in the U.S. and, in part, in another country; and provide examples of proper labeling. 16 CFR 303.33. Therefore, under the TFPIA, imported textile prod-

ucts must name the country where they were manufactured or processed. Textile products made in the United States of materials also made in the United States should be labeled as "made in USA", or words to that effect. Products made in the United States of imported materials should disclose both the U.S. manufacturing and the imported component—for example, "Made in USA of imported fabric" or "Knitted in USA of imported yarn." Similarly, textile products partially manufactured in a foreign country and partially manufactured in the United States should be labeled to show the manufacturing process both in the foreign country and in the United States—for example, "Imported cloth, finished in USA," "Sewn in USA of imported components," or "Made in (foreign country), finished in USA." The rules state further that for purposes of determining how a particular product should be labeled, a manufacturer needs to consider the origin of only those materials that are covered under the TFPIA (*i.e.*, those made of textile fibers) and that are one step removed from that manufacturing process (*i.e.*, a fabric manufacturer must identify imported yarn; a garment manufacturer must identify imported fabric).

The FTC also provides several examples of how it would view the labeling requirements of textile products made in the United States which are sent abroad for some additional finishing process, where there is no change in origin under 19 CFR 102.21. When there is no change in origin, some returned U.S. articles may simply be labeled "Made in USA," but some additional foreign processes may have to be disclosed on the label. The FTC states that in many cases if the foreign processing is sufficiently minimal, disclosure would not be necessary for compliance with the TFPIA and the rules. Such processes would include: various kinds of washing or wet processing (stone washing, enzyme washing, acid washing, sizing, starching, etc.); dyeing or bleaching; application of ink designs (heat transfer or screen printing); pressing (including permapressing and similar processes to make apparel wrinkle free); repairs or alterations; tagging or labeling; closure of single-component knit products (such as hosiery); adding or changing buttons; and boarding (adding cardboard to give the garment shape). These processes, although they enhance the value of the goods, do not alter the basic identity or character of the product.

The FTC states that the addition of ornamentation or decorative trim that involves adding textile fibers to a textile product (by embroidery, for example) is addressed in 16 CFR 303.12 and 303.26. If such trim or ornamentation either (a) does not exceed 15 percent of the surface area of the item, or (b) does not exceed 5 percent of the product's fiber weight, it is exempt from the rules' fiber content disclosure requirement. If exempt from fiber content disclosure, it is also exempt from origin disclosure if added in another country. If the decorative trim or ornamentation is more than 15 percent of the surface area and more than 5 percent of the product's fiber weight, and is applied in another

country, the foreign processing would have to be disclosed (for example, "Made in USA, embroidered in Mexico").

In those situations where the foreign processing is more than minimal finishing of an already finished article, disclosure of the foreign processing would be required. 16 CFR 303.33(a)(4). For example, if components of a garment are manufactured in the U.S., but the garment is assembled elsewhere, both aspects of the origin would have to be disclosed (*e.g.*, "Assembled in Mexico of U.S. Components").

Customs Response:

Customs appreciates the FTC's comments which clarify the marking requirements under the TFPIA. Further clarification of the rules administered by the FTC may be obtained by writing to: Textile Program, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

CONCLUSION

After analyzing the comments received and further consideration of the matter, Customs has decided to adopt the proposed interpretation that 19 CFR 12.130(c) does not apply for purposes of country of origin marking. As noted above, the textile rules of origin of 19 U.S.C. 3592, as amended, and as implemented by 19 CFR 102.21, will be determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad and that is described in those statutory and regulatory provisions. Therefore, the origin rules provided by statute and in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product by virtue of the processing performed abroad. Moreover, it should be noted that even if the U.S. textile product does not require labeling as a foreign product under those provisions, the interpretation adopted in this document does not exempt textile and apparel products imported into the United States from the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, enforced by the Federal Trade Commission.

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: April 14, 2000.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Publihsed in the Federal Register, July 11, 2000 (65 FR 42634)]

(T.D. 00–45)

FOREIGN CURRENCIES

Daily Rates for Countries Not on Quarterly List for June 2000

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): None

Austria schilling:	
June 1, 2000	$0.067637
June 2, 2000	.068545
June 3, 2000	.068545
June 4, 2000	.068545
June 5, 2000	.068828
June 6, 2000	.069548
June 7, 2000	.069766
June 8, 2000	.069388
June 9, 2000	.069228
June 10, 2000	.069228
June 11, 2000	.069228
June 12, 2000	.069359
June 13, 2000	.069904
June 14, 2000	.069693
June 15, 2000	.069257
June 16, 2000	.070115
June 17, 2000	.070115
June 18, 2000	.070115
June 19, 2000	.069926
June 20, 2000	.069453
June 21, 2000	.068712
June 22, 2000	.068298
June 23, 2000	.068007
June 24, 2000	.068007
June 25, 2000	.068007
June 26, 2000	.068182
June 27, 2000	.068632
June 28, 2000	.068632
June 29, 2000	.069148
June 30, 2000	.069366
Belgium franc:	
June 1, 2000	$0.023071
June 2, 2000	.023381
June 3, 2000	.023381
June 4, 2000	.023381
June 5, 2000	.023478
June 6, 2000	.023723
June 7, 2000	.023798
June 8, 2000	.023669
June 9, 2000	.023614
June 10, 2000	.023614

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

Belgium franc (continued):

June 11, 2000	$0.023614
June 12, 2000	.023659
June 13, 2000	.023845
June 14, 2000	.023773
June 15, 2000	.023624
June 16, 2000	.023917
June 17, 2000	.023917
June 18, 2000	.023917
June 19, 2000	.023852
June 20, 2000	.023691
June 21, 2000	.023438
June 22, 2000	.023297
June 23, 2000	.023198
June 24, 2000	.023198
June 25, 2000	.023198
June 26, 2000	.023257
June 27, 2000	.023411
June 28, 2000	.023411
June 29, 2000	.023587
June 30, 2000	.023661

Finland markka:

June 1, 2000	$0.156533
June 2, 2000	.158635
June 3, 2000	.158635
June 4, 2000	.158635
June 5, 2000	.159291
June 6, 2000	.160956
June 7, 2000	.161460
June 8, 2000	.160586
June 9, 2000	.160216
June 10, 2000	.160216
June 11, 2000	.160216
June 12, 2000	.160519
June 13, 2000	.161780
June 14, 2000	.161292
June 15, 2000	.160283
June 16, 2000	.162268
June 17, 2000	.162268
June 18, 2000	.162268
June 19, 2000	.161830
June 20, 2000	.160737
June 21, 2000	.159022
June 22, 2000	.158063
June 23, 2000	.157390
June 24, 2000	.157390
June 25, 2000	.157390
June 26, 2000	.157794
June 27, 2000	.158837
June 28, 2000	.158837
June 29, 2000	.160031
June 30, 2000	.160535

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

France franc:	
June 1, 2000	$0.141884
June 2, 2000	.143790
June 3, 2000	.143790
June 4, 2000	.143790
June 5, 2000	.144384
June 6, 2000	.145894
June 7, 2000	.146351
June 8, 2000	.145558
June 9, 2000	.145223
June 10, 2000	.145223
June 11, 2000	.145223
June 12, 2000	.145497
June 13, 2000	.146641
June 14, 2000	.146199
June 15, 2000	.145284
June 16, 2000	.147083
June 17, 2000	.147083
June 18, 2000	.147083
June 19, 2000	.146686
June 20, 2000	.145696
June 21, 2000	.144141
June 22, 2000	.143272
June 23, 2000	.142662
June 24, 2000	.142662
June 25, 2000	.142662
June 26, 2000	.143028
June 27, 2000	.143973
June 28, 2000	.143973
June 29, 2000	.145055
June 30, 2000	.145513
Germany deutsche mark:	
June 1, 2000	$0.475859
June 2, 2000	.482251
June 3, 2000	.482251
June 4, 2000	.482251
June 5, 2000	.484245
June 6, 2000	.489306
June 7, 2000	.490840
June 8, 2000	.488181
June 9, 2000	.487057
June 10, 2000	.487057
June 11, 2000	.487057
June 12, 2000	.487977
June 13, 2000	.491812
June 14, 2000	.490329
June 15, 2000	.487261
June 16, 2000	.493294
June 17, 2000	.493294
June 18, 2000	.493294
June 19, 2000	.491965
June 20, 2000	.488642
June 21, 2000	.483426
June 22, 2000	.480512
June 23, 2000	.478467
June 24, 2000	.478467

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

Germany deutsche mark (continued):	
June 25, 2000	$0.478467
June 26, 2000	.479694
June 27, 2000	.482864
June 28, 2000	.482864
June 29, 2000	.486494
June 30, 2000	.488028
Greece drachma:	
June 1, 2000	$0.002759
June 2, 2000	.002799
June 3, 2000	.002799
June 4, 2000	.002799
June 5, 2000	.002811
June 6, 2000	.002842
June 7, 2000	.002852
June 8, 2000	.002839
June 9, 2000	.002831
June 10, 2000	.002831
June 11, 2000	.002831
June 12, 2000	.002838
June 13, 2000	.002860
June 14, 2000	.002851
June 15, 2000	.002838
June 16, 2000	.002867
June 17, 2000	.002867
June 18, 2000	.002867
June 19, 2000	.002859
June 20, 2000	.002841
June 21, 2000	.002809
June 22, 2000	.002793
June 23, 2000	.002781
June 24, 2000	.002781
June 25, 2000	.002781
June 26, 2000	.002788
June 27, 2000	.002804
June 28, 2000	.002805
June 29, 2000	.002827
June 30, 2000	.002833
Ireland pound:	
June 1, 2000	$1.181745
June 2, 2000	1.197617
June 3, 2000	1.197617
June 4, 2000	1.197617
June 5, 2000	1.202569
June 6, 2000	1.215139
June 7, 2000	1.218949
June 8, 2000	1.212346
June 9, 2000	1.209552
June 10, 2000	1.209552
June 11, 2000	1.209552
June 12, 2000	1.211838
June 13, 2000	1.221361
June 14, 2000	1.217679
June 15, 2000	1.210060
June 16, 2000	1.225043

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

Ireland pound (continued):	
June 17, 2000	$1.225043
June 18, 2000	1.225043
June 19, 2000	1.221742
June 20, 2000	1.213489
June 21, 2000	1.200537
June 22, 2000	1.193300
June 23, 2000	1.188221
June 24, 2000	1.188221
June 25, 2000	1.188221
June 26, 2000	1.191268
June 27, 2000	1.199141
June 28, 2000	1.199141
June 29, 2000	1.208156
June 30, 2000	1.211965
Italy lira:	
June 1, 2000	$0.000481
June 2, 2000	.000487
June 3, 2000	.000487
June 4, 2000	.000487
June 5, 2000	.000489
June 6, 2000	.000494
June 7, 2000	.000496
June 8, 2000	.000493
June 9, 2000	.000492
June 10, 2000	.000492
June 11, 2000	.000492
June 12, 2000	.000493
June 13, 2000	.000497
June 14, 2000	.000495
June 15, 2000	.000492
June 16, 2000	.000498
June 17, 2000	.000498
June 18, 2000	.000498
June 19, 2000	.000497
June 20, 2000	.000494
June 21, 2000	.000488
June 22, 2000	.000485
June 23, 2000	.000483
June 24, 2000	.000483
June 25, 2000	.000483
June 26, 2000	.000485
June 27, 2000	.000488
June 28, 2000	.000488
June 29, 2000	.000491
June 30, 2000	.000493
Luxembourg franc:	
June 1, 2000	$0.023071
June 2, 2000	.023381
June 3, 2000	.023381
June 4, 2000	.023381
June 5, 2000	.023478
June 6, 2000	.023723
June 7, 2000	.023798
June 8, 2000	.023669

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

Luxembourg franc (continued):

June 9, 2000	$0.023614
June 10, 2000	.023614
June 11, 2000	.023614
June 12, 2000	.023659
June 13, 2000	.023845
June 14, 2000	.023773
June 15, 2000	.023624
June 16, 2000	.023917
June 17, 2000	.023917
June 18, 2000	.023917
June 19, 2000	.023852
June 20, 2000	.023691
June 21, 2000	.023438
June 22, 2000	.023297
June 23, 2000	.023198
June 24, 2000	.023198
June 25, 2000	.023198
June 26, 2000	.023257
June 27, 2000	.023411
June 28, 2000	.023411
June 29, 2000	.023587
June 30, 2000	.023661

Netherlands guilder:

June 1, 2000	$0.422333
June 2, 2000	.428005
June 3, 2000	.428005
June 4, 2000	.428005
June 5, 2000	.439775
June 6, 2000	.434268
June 7, 2000	.435629
June 8, 2000	.433269
June 9, 2000	.432271
June 10, 2000	.432271
June 11, 2000	.432271
June 12, 2000	.433088
June 13, 2000	.436491
June 14, 2000	.435175
June 15, 2000	.432453
June 16, 2000	.437807
June 17, 2000	.437807
June 18, 2000	.437807
June 19, 2000	.436627
June 20, 2000	.433678
June 21, 2000	.429049
June 22, 2000	.426463
June 23, 2000	.424648
June 24, 2000	.424648
June 25, 2000	.424648
June 26, 2000	.425737
June 27, 2000	.428550
June 28, 2000	.428550
June 29, 2000	.431772
June 30, 2000	.433133

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

Portugal escudo:	
June 1, 2000	$0.004642
June 2, 2000	.004705
June 3, 2000	.004705
June 4, 2000	.004705
June 5, 2000	.004724
June 6, 2000	.004773
June 7, 2000	.004788
June 8, 2000	.004763
June 9, 2000	.004752
June 10, 2000	.004752
June 11, 2000	.004752
June 12, 2000	.004761
June 13, 2000	.004798
June 14, 2000	.004783
June 15, 2000	.004754
June 16, 2000	.004812
June 17, 2000	.004812
June 18, 2000	.004812
June 19, 2000	.004799
June 20, 2000	.004767
June 21, 2000	.004716
June 22, 2000	.004688
June 23, 2000	.004668
June 24, 2000	.004668
June 25, 2000	.004668
June 26, 2000	.004680
June 27, 2000	.004711
June 28, 2000	.004711
June 29, 2000	.004746
June 30, 2000	.004761
South Korea won:	
June 1, 2000	$0.000883
June 2, 2000	.000889
June 3, 2000	.000889
June 4, 2000	.000889
June 5, 2000	.000894
June 6, 2000	.000895
June 7, 2000	.000898
June 8, 2000	.000896
June 9, 2000	.000896
June 10, 2000	.000896
June 11, 2000	.000896
June 12, 2000	.000898
June 13, 2000	.000897
June 14, 2000	.000897
June 15, 2000	.000897
June 16, 2000	.000896
June 17, 2000	.000896
June 18, 2000	.000896
June 19, 2000	.000891
June 20, 2000	.000893
June 21, 2000	.000893
June 22, 2000	.000894
June 23, 2000	.000893
June 24, 2000	.000893

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

South Korea won (continued):

June 25, 2000	$0.000893
June 26, 2000	.000894
June 27, 2000	.000894
June 28, 2000	.000896
June 29, 2000	.000897
June 30, 2000	.000897

Spain peseta:

June 1, 2000	$0.005594
June 2, 2000	.005669
June 3, 2000	.005669
June 4, 2000	.005669
June 5, 2000	.005692
June 6, 2000	.005752
June 7, 2000	.005770
June 8, 2000	.005738
June 9, 2000	.005725
June 10, 2000	.005725
June 11, 2000	.005725
June 12, 2000	.005736
June 13, 2000	.005781
June 14, 2000	.005764
June 15, 2000	.005728
June 16, 2000	.005799
June 17, 2000	.005799
June 18, 2000	.005799
June 19, 2000	.005783
June 20, 2000	.005744
June 21, 2000	.005683
June 22, 2000	.005648
June 23, 2000	.005624
June 24, 2000	.005624
June 25, 2000	.005624
June 26, 2000	.005639
June 27, 2000	.005676
June 28, 2000	.005676
June 29, 2000	.005719
June 30, 2000	.005737

Taiwan N.T. dollar:

June 1, 2000	$0.032362
June 2, 2000	.032415
June 3, 2000	.032415
June 4, 2000	.032415
June 5, 2000	.032436
June 6, 2000	.032436
June 7, 2000	.032468
June 8, 2000	.032468
June 9, 2000	.032468
June 10, 2000	.032468
June 11, 2000	.032468
June 12, 2000	.032468
June 13, 2000	.032468
June 14, 2000	.032468
June 15, 2000	.032415
June 16, 2000	.032362

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 2000 (continued):

Taiwan N.T. dollar (continued):	
June 17, 2000	$0.032362
June 18, 2000	.032362
June 19, 2000	.032362
June 20, 2000	.032362
June 21, 2000	.032436
June 22, 2000	.032468
June 23, 2000	.032468
June 24, 2000	.032468
June 25, 2000	.032468
June 26, 2000	.032457
June 27, 2000	.032446
June 28, 2000	.032446
June 29, 2000	.032436
June 30, 2000	.032468

Dated: July 3, 2000.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 00–46)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: JULY 1, 2000 THROUGH SEPTEMBER 30, 2000

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.599600
Brazil	Real	0.552792
Canada	Dollar	0.675955
China, P.R.	Yuan	0.120793
Denmark	Krone	0.127714
Hong Kong	Dollar	0.128271
India	Rupee	0.022361
Iran	Rial	N/A
Israel	New Sheqel	N/A
Japan	Yen	0.009466
Malaysia	Ringgit	0.263158
Mexico	New Peso	0.104685
New Zealand	Dollar	0.467500

Country	Name of currency	U.S. dollars
Norway	Krone	$0.116850
Philippines	Peso	N/A
Singapore	Dollar	0.577134
South Africa	Rand	0.146789
Sri Lanka	Rupee	0.012618
Sweden	Krona	0.113733
Switzerland	Franc	0.612632
Thailand	Baht	0.025387
United Kingdom	Pound Sterling	1.513500
Venezuela	Bolivar	0.001465

Dated: July 3, 2000.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 00–47)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JUNE 2000

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 00–24 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): None.

Australia dollar:	
June 1, 2000	$0.572100
Mexico new peso:	
June 7, 2000	$0.102208
June 8, 2000	.101010
June 9, 2000	.100680
June 10, 2000	.100680
June 11, 2000	.100680
June 12, 2000	.101451
June 13, 2000	.102166
June 14, 2000	.102171
June 15, 2000	.101554
June 16, 2000	.100771
June 17, 2000	.100771
June 18, 2000	.101771

FOREIGN CURRENCIES—Variances from quarterly rates for June 2000 (continued):

Mexico new peso (continued):

June 19, 2000	$0.100918
June 20, 2000	.101225
June 21, 2000	.101885
June 22, 2000	.101225
June 23, 2000	.100251
June 24, 2000	.100251
June 25, 2000	.100251
June 26, 2000	.099771
June 27, 2000	.099138
June 28, 2000	.100316
June 29, 2000	.101133
June 30, 2000	.101595

New Zealand dollar:

June 1, 2000	$0.456100
June 2, 2000	.466400
June 3, 2000	.466400
June 4, 2000	.466400
June 5, 2000	.467500
June 6, 2000	.473800
June 7, 2000	.472000
June 8, 2000	.468500
June 9, 2000	.468000
June 10, 2000	.468000
June 11, 2000	.468000
June 12, 2000	.470700
June 13, 2000	.472000
June 15, 2000	.469000
June 19, 2000	.473000
June 22, 2000	.472800
June 23, 2000	.471500
June 24, 2000	.471500
June 25, 2000	.471500
June 26, 2000	.469500
June 27, 2000	.472000
June 28, 2000	.465000
June 29, 2000	.469200
June 30, 2000	.469000

Norway krone:

June 1, 2000	$0.111857

South Africa rand:

June 1, 2000	$0.143113
June 2, 2000	.144300
June 3, 2000	.144300
June 4, 2000	.144300
June 5, 2000	.144404
June 6, 2000	.143988
June 7, 2000	.143421
June 8, 2000	.141894
June 9, 2000	.142776
June 10, 2000	.142776
June 11, 2000	.142776
June 12, 2000	.142288
June 13, 2000	.142755

FOREIGN CURRENCIES—Variances from quarterly rates for June 2000 (continued):

South Africa rand (continued):

June 14, 2000	$0.144300
June 15, 2000	.144928
June 20, 2000	.144823
June 21, 2000	.144300
June 22, 2000	.144530

Sri Lanka rupee:

June 20, 2000	$0.012780
June 21, 2000	.012706
June 22, 2000	.012686
June 23, 2000	.012674
June 24, 2000	.012674
June 25, 2000	.012674
June 26, 2000	.012674
June 27, 2000	.012658
June 28, 2000	.012658
June 29, 2000	.012626
June 30, 2000	.012626

United Kingdom pound sterling:

June 1, 2000	$1.491500
June 2, 2000	1.507900
June 3, 2000	1.507900
June 4, 2000	1.507900
June 5, 2000	1.513500
June 8, 2000	1.506000
June 9, 2000	1.507900
June 10, 2000	1.507900
June 11, 2000	1.507900
June 12, 2000	1.512000
June 13, 2000	1.513000
June 14, 2000	1.502300
June 15, 2000	1.510300
June 16, 2000	1.516500
June 17, 2000	1.516500
June 18, 2000	1.516500
June 19, 2000	1.515400
June 20, 2000	1.510000
June 21, 2000	1.497000
June 22, 2000	1.511000
June 23, 2000	1.501000
June 24, 2000	1.501000
June 25, 2000	1.501000
June 26, 2000	1.499000
June 27, 2000	1.500000
June 28, 2000	1.510700
June 30, 2000	1.513000

Dated: July 3, 2000.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 5, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN WOMEN'S GARMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and of treatment relating to the tariff classification of certain women's knit garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain women's knit garments and revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 18, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 927–2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter (Title VI) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are informed compliance and shared responsibility These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade communities responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain women's knit garments. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) D86889, dated February 22, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may

raise a rebuttable presumption of a lack of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY D86889, Customs classified three garments at issue, described in "Attachment A" as outerwear under headings 6110 and 6114 of the Harmonized Tariff Schedule of the United States (HTSUS). It is now Customs determination that the garments are classifiable as sleepwear in heading 6108, HTSUS, for the reasons set forth in "Attachment B."

Customs intends to revoke NY D86889 and any other ruling not specifically identified, in order to classify this merchandise under heading 6108. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Proposed HQ 962827, revoking NY D86889 is set forth as "Attachment B" to this document.

Dated: June 30, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 22, 1999.

CLA-2-61:RR:NC:WA:361 D86889
Category: Classification
Tariff No. 6110.20.2075,
6114.20.0010, and 6114.20.0060

MS. ALLISON M. BARON
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
67 Broad Street
New York, NY 10004

Re: The tariff classification of four women's knit garments from Korea, the Philippines or Israel.

DEAR MS. BARON:

In your letter dated January 15, 1999, you requested a tariff classification ruling for four women's garments on behalf of Donna Karan Intimates, a division of Wacoal America, Inc. The samples are being returned, as you requested.

Style 446004 is described as a boy-leg brief constructed from 65% cotton, 35% polyester pointelle knit fabric. The garment has a ½ inch elasticized waistband and leg openings that are finished with a one-inch rib knit band.

Style 462004 is a top constructed from 65% cotton, 35% polyester pointelle knit fabric. The top has ¼ inch shoulder straps, one-inch side slits, and a hemmed bottom. The upper edge of the back of the garment is cut straight across, from side seam to side seam.

Style 462003 is a pullover constructed from 65% cotton, 35% polyester pointelle knit fabric with more than nine stitches per two centimeters in the horizontal direction. The pull-

over has a rib knit V-shaped neckline, short sleeves, one-inch side slits, and a hemmed bottom.

Style 462009 is a pullover constructed from 95% cotton, 5% spandex embroidered knit fabric. The pullover has an elasticized peasant styled neckline, short sleeves, a gathered bodice, and a hemmed bottom.

Although you have stated that these garments are underwear, we believe that they will not be principally used as such in the United States.

The applicable subheading for style 446004 will be 6114.20.0060, Harmonized Tariff Schedule of the United States (HTS), which provides for other garments, knitted, of cotton, women's or girls'. The rate of duty will be 11.2 percent ad valorem.

The applicable subheading for style 462004 will be 6114.20.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for other garments, knitted, of cotton, tops, women's or girls'. The rate of duty will be 11.2 percent ad valorem.

The applicable subheading for styles 462003 and 462009 will be 6110.20.2070, Harmonized Tariff Schedule of the United States (HTS), which provides for pullovers * * * and similar articles, knitted, of cotton, women's or girls'. The rate of duty will be 18.6 percent ad valorem.

Styles 462004, 462003 and 462009 fall within textile category designation 339; style 446004 falls within textile category designation 359. Based upon international textile trade agreements, garments imported from Korea and the Philippines are subject to a visa requirement and quota restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

If you have any questions regarding the ruling, contact National Import Specialist Angela De Gaetano at 212–637–7029.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 962827 RH
Category: Classification
Tariff Nos. 6108.31.0010 and 6108.91.0030

ALLISON M. BARON, ESQ.
SHARRETTS, PALEY, CARTER & BLAUVELT, P.C.
Seventy-five Broad Street
New York, NY 10004

Re: Request for Reconsideration of NY D86889; Women's Underwear; Loungewear; Sleepwear.

DEAR MS. BARON:

This is in reply to your letter of April 27, 1999, requesting reconsideration of New York Ruling Letter D86889, dated February 22, 1999, concerning the classification of certain

women's garments. Your request is on behalf of your client, Donna Karan Intimates, a division of Wacoal America, Inc.

Members of my staff met with you and your client on March 10, 2000, to discuss the issues raised in this case.

Facts:

The merchandise at issue consists of three styles of garments, which are described in NY D86889 as follows:

> Style 446004 is described as a boy-leg brief constructed from 65% cotton, 35% polyester pointelle knit fabric. The garment has a ½ inch elasticized waistband and leg openings that are finished with a one-inch rib knit band.
>
> Style 462004 is a top constructed from 65% cotton, 35% polyester pointelle knit fabric. The top has ¼ inch shoulder straps, one-inch side slits, and a hemmed bottom. The upper edge of the back of the garment is cut straight across, from side seam to side seam.
>
> Style 462003 is a pullover constructed from 65% cotton, 35% polyester pointelle knit fabric with more than nine stitches per two centimeters in the horizontal direction. The pullover has a rib knit V-shaped neckline, short sleeves, one-inch slits, and a hemmed bottom.

You do not contest the classification of style 462009 in NY D86889.

Issue:

Are the garments in question classifiable as outerwear, underwear or sleepwear?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, taken in their appropriate order.

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As stated by the court in *Mast Industries, Inc. v. United States*, 9 Ct. Int'l Trade 549, 552 (1985), aff'd 786 F.2d 1144 (Ct. of App'ls for Fed. Cir., April 1, 1986), "the merchandise itself may be strong evidence of use". However, when presented with a garment which is ambiguous and not clearly recognizable as sleepwear, underwear, loungewear or outerwear, Customs will look to other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States*, 16 Ct. Int'l Trade 407 (1992).

Consideration of marketing information, and the design and construction details of the garments are instructive in determining whether or not they are principally used as outerwear or underwear. Additional U.S. Rule of Interpretation 1(a), HTSUSA, provides that in the absence of context to the contrary, a tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation of goods of the same class or kind or merchandise.

In holding that the garments would not be principally used in the United States as underwear, Customs classified styles 446004 and 462004 in heading 6114, HTSUSA, which provides for other garments, knitted or crocheted. Customs classified style 462003 in heading 6110, HTSUSA, which encompasses sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.

In support of your claim that the garments are principally used as underwear, you submitted a letter from the President of Donna Karan Intimates and DKNY Underwear Division of Wacoal America, Inc., stating that the styles at issue are considered underwear. The letter reads, in part:

> The styles referenced in this letter are designed to reflect the latest trend in women's foundation garments. However, each garment is also designed to ensure that it will be physically suitable for its intended purpose as a foundation piece to be worn under outerwear garments. For example, none of the subject styles feature snaps or buttons that will interfere with the wearer's outerwear blouse, skirt, or pants. Similarly, while all of

these styles feature seams and stitching designed to indicate that these components are "luxury" garments, these same seams are only found in the areas that will enhance, rather than distort, their use as underwear.

Additionally, you submitted a letter from the Nordstrom department store stating that the store purchases all of Wacoal's products for the intimate apparel and sleepwear departments and they are sold to the consumer as intimate apparel and sleepwear.

Notwithstanding the statements of intent to market the garments as underwear, we find that the garments do not support such classification. The garments are not form fitting and it appears they would interfere with the drapability of a garment worn over them. Moreover, your client acknowledged during the meeting that sleepwear buyers in department stores ultimately purchased the garments.

Classification of garments as sleepwear is also based upon use. In Mast, *supra*, the Court of International Trade cited several lexicographic sources, among them *Webster's Third New International Dictionary*, which defined "nightclothes" as "garments to be worn to bed." Customs also refers to the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (1988), for guidance in determining whether a garment has characteristics of sleepwear. At page twenty-four, the *Guidelines* state that "the term 'nightwear' means 'sleepwear' so that certain garments worn in bed in the daytime * * * are included."

In our view, the garments in question are lightweight, loose fitting, extremely soft and sheer and are of the kind principally used as sleepwear in the United States. Thus, they are more specifically provided for as sleepwear in heading 6108 and are not classified as other garments in heading 6114.

Holding:

NY D86889 is REVOKED.

If imported separately, or without a matching component to comprise pajamas, the garments at issue are classifiable as other sleepwear garments in subheading 6108.91.0030, HTSUSA. This provision provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton: Other." Goods classified in subheading 6108.91.0030, HTSUSA, are dutiable at the general column one rate of 8.7 percent *ad valorem* and are subject to textile category 350.

If imported in shipments containing equal numbers (pairs) of matching tops and bottoms, the garments will be classified as women's knit pajamas in subheading 6108.31.0010, HTSUSA. This provision provides for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Nightdresses and pajamas: Of cotton: Women's." Goods classified in subheading 6108.31.0010, HTSUSA, are dutiable at the general column one rate of 8.7 percent *ad valorem* and are subject to textile category 351.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

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